

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[Second Reprint]

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 206, 471, 1663, 2879, 3060, and 3108**

with committee amendments

## **STATE OF NEW JERSEY**

DATED: JUNE 8, 2015

The Senate Budget and Appropriations Committee reports favorably Assembly Bill Nos. 206, 471, 1663, 2879, 3060, and 3108 (ACS/2R), with committee amendments.

As amended, this bill establishes new expungement procedures for records and information pertaining to crimes and offenses, including procedures for persons who are, or previously have been, successfully discharged from the State's special probation drug court program. It also provides shorter waiting periods before certain records and information become expungeable.

Regarding a person with a criminal conviction, that person would be permitted to make an application with an expungement petition to the Superior Court in the county in which the criminal conviction was adjudged. That application could include additional, separate petitions seeking to expunge no more than two other convictions for disorderly persons or petty disorderly persons offenses. The application could only be filed after the expiration of five years from the date of the person's most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, for the crime or for any disorderly persons or petty disorderly persons offense, whichever is later (the waiting period under current law for a criminal conviction expungement is ordinarily 10 years). Alternatively, the court could grant an expungement on the application if less than five years has expired from the payment of any fine but the five-year waiting period is otherwise satisfied, and the court finds that the person substantially complied with any payment plan for that fine or could not do so due to compelling circumstances.

Regarding a person with a conviction for a disorderly persons or petty disorderly persons offense, but no criminal conviction, that person would be permitted to make an application with an expungement petition to the Superior Court concerning that offense

following a procedure similar to that used for criminal convictions. The application, like an application concerning a criminal conviction, could include additional, separate petitions seeking to expunge no more than two other convictions for disorderly persons or petty disorderly persons offenses. The application could only be filed after the expiration of three years from the date of the person's most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration for any disorderly persons or petty disorderly persons offense, whichever is later (the waiting period on convictions for such offenses under current law is five years). Alternatively, the court could grant an expungement on the application if less than three years has expired from the payment of any fine but the three-year waiting period is otherwise satisfied, and the court finds that the person substantially complied with any payment plan for that fine or could not do so due to compelling circumstances.

Regarding a person with an arrest or charge that did not result in a conviction or finding of guilt, whether the proceedings were dismissed, or the person acquitted or discharged, upon a person presenting an application for expungement:

(1) if the proceedings took place in Superior Court, the court, at the time of dismissal, acquittal, or discharge, would order the expungement of all records and information relating to the arrest or charge; or

(2) if the proceedings took place in municipal court, the municipal court would provide the person with appropriate documentation to transmit to the Superior Court to request an expungement, and the Superior Court, upon receipt of the documentation with an expungement request would take action to order the expungement of all records and information relating to the arrest or charge. A person seeking such an expungement of municipal court matters would not be charged an application fee for taking such action.

An expungement related to a dismissal, acquittal, or discharge without a conviction or finding of guilt would not be available whenever the dismissal, acquittal, or discharge resulted from a plea bargaining agreement involving the conviction of other charges. However, this bar on such expungements would no longer apply once the conviction connected to the plea bargain was itself expunged.

If the person did not apply for an expungement related to a dismissal, acquittal, or discharge at the time such action occurred, the person could, at any time following the disposition of proceedings, present to the Superior Court in the county in which the disposition occurred an application with a duly verified petition, containing relevant details concerning the applicant and the arrest or charge for which the expungement is sought. The person, pursuing this "after the fact" expungement application, would also not be charged an application fee.

A copy of any Superior Court order of expungement related to a dismissal, acquittal, or discharge would be presented to the appropriate court and the prosecutor. The prosecutor would then be responsible for promptly distributing copies of the expungement order to appropriate agencies with custody and control of the records specified in the order so that they may be properly expunged.

Regarding a person who is, or was prior to the effective date of the bill, successfully discharged from the State's special probation drug court program, the bill would permit the Superior Court that had sentenced the person to the program to expunge all records and information relating to prior arrests, detentions, convictions, and proceedings for any offense enumerated in the Criminal Code, Title 2C of the New Jersey Statutes, existing at the time of discharge from the program. However, the person would not be eligible for such an expungement action if the person's records include a conviction for any offense barred from expungement pursuant to N.J.S.2C:52-2.

For a person who is successfully discharged *on or after* the effective date of the bill, the person would only be eligible to have all prior matters expunged if the person was not convicted of any crime, disorderly persons offense, or petty disorderly persons offense during the term of special probation. For a person who was successfully discharged *prior* to the effective date of the bill, the person would only be eligible to have all matters expunged that existed at the time of discharge from the program if the person has not been convicted of any crime or offense since the person's date of discharge.

The Superior Court would grant the person successfully discharged from the special probation drug court program the relief of expungement, unless it finds that the need for the availability of the records and information outweighs the desirability of having the person freed from any disabilities associated with their availability. The person would not be charged any fee for such an expungement action.

Lastly, regarding the continued availability of any expunged records and information, the bill updates the statutory list of parties within the criminal justice system that may still view such records and information. Along with courts, county prosecutors, the Probation Division of the Superior Court, and the Attorney General, the Pretrial Services Program making pretrial release recommendations on certain persons undergoing the release determination process set forth in sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.) would also be able to examine expunged records and information.

As amended and reported, this bill is identical to Senate Bill No. 2663 (1R), as also amended and reported by the committee.

#### COMMITTEE AMENDMENTS:

The committee amendments to the bill:

- provide, with respect to the expungement of an arrest or charge that did not result in a conviction or finding of guilt due to a plea bargaining agreement involving the conviction of other charges, that such expungement would only be barred until the time that the conviction connected to the plea bargain was itself expunged; and

- clarify that if a person is eligible to expunge an arrest or charge that did not result in a conviction or finding of guilt due to a dismissal, acquittal, or discharge, but the person did not make an expungement application with the court at the time of such action, the person could, at any time following the disposition of those proceedings, present an application to the appropriate Superior Court seeking the expungement of the arrest or charge.

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the shortening of the waiting periods for expungement are anticipated to encourage increased petitions for expungement.

The OLS also notes that the bill provides for permissive action of the Superior Court to expunge records of certain persons who have completed a substance abuse program ordered by the court, without fee to the person affected, and the bill provides for the automatic expungement of the arrest records of certain persons not convicted of the charges, without fee to the person affected. There are insufficient data available to estimate the impact that this may have on administrative costs of the Administrative Office of the Courts, prosecutors, public defenders, and the agencies that have custody and control of the records that must be removed from public access.